

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 05-cv-10571-RWZ

JOSEPH SCHMITT,  
Plaintiff,

v.

MASSACHUSETTS DEPARTMENT OF  
CORRECTION, et al.,

Defendants.

**DEFENDANT DEPARTMENT OF CORRECTION'S OPPOSITION TO  
REQUEST FOR ENTRY OF DEFAULT**

Defendant Department of Correction hereby opposes plaintiff's Request for Entry of Default. As grounds therefore, counsel for the Department of Correction states as follows:

1. Counsel for the Department of Correction electronically filed a Notice of Appearance and Motion to Enlarge Time on today's date.
2. Although plaintiff names a total of six defendants in this lawsuit, to date, he has only served the Department of Correction. As such, plaintiff is not prejudiced by the delay in the Department's response to his Complaint. Moreover, the Department of Correction is not a proper defendant in a case involving civil rights violations under 42 U.S.C. Section 1983.
3. In addition, the Complaint contains allegations that are similar to those raised in Schmitt v. Massachusetts Department of Correction,

Case Number 05-cv-12580-RWZ, which was dismissed by this Court in an Order dated July 20, 2006. As such, defendants expect to file a dispositive motion so as to resolve this case in the same manner. This case is moot in that plaintiff is not longer incarcerated at MCI Cedar Junction, the institution out of which this Complaint arises.

4. In addition, the defendant Department of Correction requests that this Court require plaintiff to show good cause and reason why this why this case is not barred by principles of issue and claim preclusion.
5. Wherefore, the Department of Correction respectfully requests that this Court DENY plaintiff's Request for Entry of Default.

Dated: July 20, 2006

Respectfully submitted,

NANCY ANKERS WHITE  
Special Assistant Attorney General

/s/ Jody T. Adams

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**CERTIFICATE OF SERVICE**

I hereby certify that on this date a true copy of the above document was served on plaintiff, pro se, via first class mail.

/s/ Jody T. Adams

Dated: 7/20/2006

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Jody T. Adams, Counsel